

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
At Martinsburg**

KARA KOWALSKI,

Plaintiff,

v.

Civil Action No. 3:07-CV-147

Judge John Preston Bailey

BERKELEY COUNTY PUBLIC SCHOOLS, et al.

Defendants.

DEFENDANTS' MOTION TO DISMISS

COME NOW Defendants, the Berkeley County Board of Education (“the Board”), Manny P. Arvon, III, Ronald Stephens, Becky J. Harden, Buffy Ashcraft and Rick Deuell, by and through their undersigned counsel, to move this Honorable Court to dismiss this action pursuant to Rule 12 of the Federal Rules of Civil Procedure. The Plaintiff fails to state a claim against any of the Defendants upon which relief can be granted, therefore, dismissal is appropriate.

Specifically, these Defendants are entitled to dismissal on the following bases:

1. Plaintiff fails to state a claim against the Berkeley County Board of Education upon which relief can be granted.
2. The Individual Defendants should be dismissed because the Plaintiff fails to state a claim against them upon which relief can be granted.
3. Plaintiff fails to state a claim for the alleged violation of her First Amendment Rights;

4. Plaintiff does not state a claim for violation of her procedural due process rights;

5. Plaintiff has failed to state a claim for violation of the Equal Protection Clause of the U.S. Constitution upon which relief can be granted;

6. Plaintiff is not entitled to any relief against these Defendants under the Cruel and Unusual Punishment Clause of the U.S. Constitution;

7. Plaintiff is not entitled to any relief against these Defendants under the Privileges and Immunities Clause of the U.S. Constitution;

8. Plaintiff fails to state a claim for negligent infliction of emotional distress upon which relief can be granted.

The Defendants also submit this day their Memorandum of Law in Support of this motion and respectfully refer the Court to it for a more detailed discussion of these issues.

WHEREFORE, the Defendants respectfully request that this Court grant their *Motion to Dismiss*.

Respectfully submitted this 5th day of December, 2007.

/s/ Tracey B. Eberling

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